SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1967
No. 851

PACIFIC SCIENTIFIC COMPANY,

Petitioner,

vs.

AEROTEC INDUSTRIES OF CALIFORNIA, AEROTEC INDUSTRIES, INC., and UNIVERSAL OIL PRODUCTS COMPANY,

Respondents.

RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

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RESPONDENTS' OPPOSITION TO MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Respondents hereby object to the Motion for Leave to File Brief as *Amicus Curiae* on behalf of Strategic Industries Association.

Respondents have refused to consent to the filing of such Motion because:

1. Petitioner admittedly is a member of the Association, which is a California corporation. Petitioner's President and Chairman of the Board (Decker G. McAllister) has testified "See, I was a director of what used to be the Small Defense Industry Association formed in Southern Califor-

nia and is now the Strategic Industries Association." [RT 1774, lines 24-26, in the accounting]. The patentee (Pfankuch) of Petitioner's patent here in suit, was President of the Association for some time before and after 1957.

Petitioner's present President (Burt Hawks) is at present Vice President of Strategic Industries Association.

It appears that Petitioner is using the Association as an *alter ego*. It is deemed improper, and an imposition upon this Court to permit a Petitioner to attempt to also appear here under the guise of *amicus curiae*.

2. The Motion fails to show cause for its allowance and does not conform to Rule 42 Sub. 3 of this Court. It does not set forth facts or questions of law that have not been presented; it does not set forth any reasons for believing that any question of law will not be adequately presented by the parties. The Motion fails to show that the Association is engaged in any pending patent case which will be affected. The Motion to file the brief as *amicus curiae* should be denied as in *Northern Securities Co. v. U.S.*, 191 U.S. 555.

3. The proposed brief virtually admits that the questions presented by Petitioner were hypothetical. Applicant Association alleges that it desires this Court to particularly state "* * * what is and what is not prior art to be considered as pertinent in applying the statute" (page 4 of Motion).

That is a question which has been decided by this Court in *Calmar v. Cook,* 383 U.S. 26, where this Court again held that a restricted view of applicable prior art is not justified (383 U.S. at 35).

"* * * We have concluded that the 1952 Act was intended to codify judicial precedents embracing the principle long ago announced by this Court in Hotchkiss v. Greenwood, 11 How. 248 (1850), and that, while the clear language of § 103 placed emphasis on an inquiry into obviousness, the general level of innovation necessary to sustain patentability *remains the same.*" (emphasis added)

Graham v. John Deere Co., 383 U.S. 3, 4.

The Act and § 103 did not change the general rules heretofore established by this Court for determining the scope of and applying pertinent art. These rules have been established by numerous cases determined by this Court (pages 9-11, Respondents' Brief in Opposition).

Pertinent prior art varies with the subject matter of each case. "Special and important" reasons for granting a Writ of Certiorari (falling within Rule 19 of this Court) do not embrace academic, episodic and incidental problems of limited significance, as pointed out by this Court in *Rice v. Sioux City Memorial Park Cemetery,* 349 U.S. 70.

It is respectfully submitted that the Motion for Leave to File Brief as *Amicus Curiae* in support of the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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